

Persons who permanently incorporate tangible personal property into real property are considered construction contractors for Retailers' Occupation Tax purposes. See 86 Ill. Adm. Code 130.1940. (This is a GIL.)

January 4, 1999

Dear Ms. Xxxxx:

This letter is in response to your letter dated June 24, 1998. We regret the delay in our response. The Department received two similar letters from you dated a day apart, in different program areas. Our review of our records indicated that the second letter was slightly different from the first and that we had not yet responded to it. The nature of your letter and the information you have provided require that we respond with a General Information Letter which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

WE ARE IN THE BUSINESS OF FURNISHING AND INSTALLING FLOOR COVERINGS IN VARIOUS BUILDINGS IN THE CITY AREA AND OUR OFFICE IS IN THE DOWNTOWN AREA OF CITY. WE INSTALL BOTH IN THE GLUE DOWN METHOD WITH A RELEASE ADHESIVE AND TACKLESS, AND SINCE BOTH ARE ABLE TO BE REMOVED FROM THE FLOORS AND NEW CARPET INSTALLED, WE HAVE TAXED OUR CUSTOMERS ON THE MATERIALS USED.

RECENTLY ONE OF OUR CUSTOMERS HAS QUESTIONED THE FACT THAT GLUE DOWN CARPET SHOULD NOT BE TAXED. ANOTHER QUESTION THAT HAS BEEN RAISED IS ABOUT BEING IN AN ENTERPRISE ZONE. WE DO NOT KNOW IF WE ARE IN ONE OR NOT, AND WHAT IT MEANS IF WE ARE IN ONE.

WE WOULD, THEREFORE, LIKE A CLARIFICATION AND INTERPRETATION OF THE SECTION IN QUESTION AS WELL AS A COPY OF THE ORIGINAL CODE THAT WAS REVISED/

YOUR HELP IN THIS MATTER WILL BE MOST APPRECIATED.

As stated in our August 13, 1998 letter to you, floor coverings are generally installed in one of two ways. They are either affixed with cement, glue, or other permanent adhesive or are simply tacked down. These methods are currently treated differently for tax purposes, but new regulations have been proposed that will treat the methods the same.

Under the current regulations, persons who permanently incorporate tangible personal property into real property are considered construction contractors for Retailers' Occupation Tax purposes. See the enclosed copy of 86 Ill. Adm. Code 130.1940. In Illinois, construction contractors are deemed to be the end users of the building materials that they take off the market and permanently affix to

real estate. When flooring retailers affix materials to real property by use of adhesives or glue, they are acting as construction contractors and are responsible for Use Tax based upon their cost price of materials. In this instance, no tax is due from the purchaser. The tax treatment for these persons will not be altered by the proposed regulations.

The current regulations also provide that where flooring retailers sell flooring materials with installation that consists of "tacking" (such as the standard installation for carpeting), the flooring remains tangible personal property and the sale is subject to Retailers' Occupation Tax plus applicable local taxes. The gross receipts from the sale of tangible personal property generally includes any special service charges unless the buyer and the seller agree to the special charges separately from the selling price of the property. This separate agreement can be evidenced by an invoice that separately states the service charge and has been signed or initialed by the customer. See 86 Ill. Adm. Code 130.450, enclosed. The tax treatment for these persons will change if the proposed regulations are adopted. Under the proposed regulations, persons who perform tackless installation will be considered construction contractors responsible for the Use Tax based upon their cost price of the materials. When these rules are adopted, no tax will be due from the purchaser.

Enclosed is a copy of 86 Ill. Adm. Code 130.1951 concerning Enterprise Zones. The enterprise zone building materials exemption allows retailers located in the municipality or unincorporated area of a county that established an enterprise zone to make tax-free sales of building materials that will be incorporated into real estate located in the enterprise zone. In order to determine whether you are located within an enterprise zone, please contact your unit of local government.

In general, in order for businesses to qualify for the exemption as retailers, they must comply with the following requirements:

1. Retailers must have an identifiable physical presence in the municipality or the county that has established the enterprise zone;
2. Retailers must register with the Department as a retailer at a location in the municipality or in the unincorporated area of the county that has established the enterprise zone;
3. Retailers must be able to document the acceptance of purchase orders at the location in the municipality or the county that has established the enterprise zone.

In order for the enterprise zone building materials exemption to be claimed, it must be shown that qualifying building materials were purchased from a retailer located in the jurisdiction that created the enterprise zone into which the building materials will be incorporated. It is critical that a clear paperwork trail exists showing that buyers purchased the materials from qualified retailers. In general, the following two transactions must exist:

1. Sales from suppliers to retailers who are located in the jurisdiction that created the enterprise zone (exempt as sales for resale);

2. Sales from retailers who are located in the jurisdiction that created the enterprise zone to buyers (exempt by reason of the enterprise zone building materials exemption).

Each of these transactions must exist independent of the other and the exemption applicable to each transaction must be documented. We urge taxpayers not to be cavalier in structuring these transactions. Generally, the following documentation establishes the two transactions and the available exemptions:

1. Sales from suppliers to retailers:
  - a. purchase orders from retailers to the suppliers;
  - b. Certificates of Resale from retailers to suppliers (see the enclosed copy of 86 Ill. Adm. Code 130.1405 which describes the requirements for Certificates of Resale);
  - c. invoices from suppliers to retailers;
  - d. payments to suppliers from retailers.
2. Sales from retailers to purchasers:
  - a. purchase orders from purchasers to the retailers;
  - b. enterprise zone building materials certifications from purchasers to retailers containing all of the information set forth at 86 Ill. Adm. Code 130.1951(a)(3);
  - c. invoices from retailers to purchasers;
  - d. payments to retailers from purchasers.

I hope this information is helpful. The Department of Revenue maintains a Web site which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis  
Associate Counsel

MAJ:msk  
Enc.